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PRIVILEGED AND CONFIDENTIAL

FILE NUMBER

Members of the Commission
Burbank-Glendale-Pasadena Airport
2627 Hollywood Way
Burbank, California 91505

Dear Commission Members:

At your direction, we are providing herewith our opinion as to whether Mrs. Margie Gee, recently appointed as a member of the Burbank-Pasadena-Glendale Airport Authority Commission, is disabled either from serving on the Commission or from taking part in Commission decisions.

Our opinion takes into consideration the following facts: Mrs. Gee and her husband are owners of residential property located close to the southern boundary of Burbank Airport. Mr. and Mrs. Gee and four of their children are among the plaintiffs in an action entitled Blaine, et al. v. Burbank-Glendale-Pasadena Airport Authority, Case No. C 458 245, filed on June 29, 1983, in the Los Angeles Superior Court. In this action, plaintiffs are seeking inverse condemnation and nuisance damages in the amount of \$100,000 per property and \$100,000 per person. Such damages are alleged to have resulted from the noise, fumes and vibrations of aircraft operations at Burbank Airport, and are sought for a period from 100 days prior to the filing of the suit through the date of trial. This action is presently being held in abeyance pending the outcome of the California Supreme Court's deliberations in Baker, et al. v. Burbank-Glendale-Pasadena Airport Authority.

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Mrs. Gee and her family are also plaintiffs in an action entitled Abacherle, et al. v. Lockheed Air Terminal, Inc., Los Angeles Superior Court Case No. C 229785. In that case plaintiffs seek recovery for inverse condemnation and personal and property damages through June, 1978. Although the Abacherle Court rendered an intended decision dismissing plaintiffs' claims as barred by the statute of limitations, no judgment has been entered pending the decision in Baker. While not directed against the present owners of Burbank Airport, the existing decision and ultimate outcome in this case could have a bearing on the outcome in the Blaine case, which is before the same judge.

The foregoing facts give rise to three distinct areas of potential conflict: property damage claims, personal injury claims and property ownership. We consider each of these below. Our opinion is based upon an analysis of California's Political Reform Act (Government Code sections 87100, et seq.), the Burbank-Glendale-Pasadena Airport Authority Conflict of Interest and Disclosure Code and decisional authority. While presented here in summary form, we would be pleased to provide the Commission with the details of our analysis and the specific authorities upon which we rely if desired.

1. Property Damage Claims.

Mrs. Gee's financial interest in the outcome of the Blaine lawsuit creates a limited but direct conflict of interest between her personal and public duties which is most apparent in the context of her property damage claim. This is because real property interests which may be impacted by official decisions are specifically addressed in the Political Reform Act. It is our opinion that Mrs. Gee should not participate in any Commission vote which could reasonably be expected to affect the property damage award which she and her family seek. While not all possible issues which may come before the Commission can be anticipated, the most clearly relevant of these would be proposals affecting the noise of operations at the Airport during the pendency of the lawsuit, since Authority actions (or inaction) are the precise basis upon which the plaintiff's claims are prosecuted and upon which the amount of an award, if any, would be based.

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2. Personal Injury Claims.

While Commission decisions on a number of issues, most particularly noise-related issues, would also directly affect the personal injury claims raised in the Blaine lawsuit, this is not as clear an adverse financial interest as that presented by the property damage claims because personal injury claims are not the subject of any specific statutory provision and we are aware of no decisions which have considered the issue. Nevertheless, it is our opinion that under the broad tenets of common law decisions which have considered conflict situations in other contexts, Mrs. Gee's claim for personal injury damages would likewise disable her from voting on matters which may affect the outcome of the litigation.

3. Property Ownership.

Among the claims made in the Blaine and Abacherle cases is the contention that operations at Burbank Airport have an adverse impact on the value of properties which regularly experience noise or other effects of such operations. In contrast, there exists substantial evidence that such adverse financial impacts have already been capitalized into the value of properties in question. On balance, it is our opinion that Mrs. Gee's ownership of adjacent real property does not automatically disable her from voting on noise-related matters, despite a possibility that such a vote could affect the value of her property. However, situations may arise where a proposal before the Commission could have direct effect on her property, in which case Mrs. Gee should not play any role in the decision-making process.

4. Procedures.

While the conflict of interest laws are not self-enforcing, failure of an official to disqualify himself or herself in a conflict situation can result in a private action to enforce compliance with the Political Reform Act and/or to void the subject decision.

When a conflict of interest situation arises, the


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involved official should disclose the nature of the conflict, abstain from any vote and refrain from attempting to influence other Commission members. The minutes of the meeting in question should so reflect.

In addition to the foregoing, while no statute prohibits an official having a conflict from holding office, some decisions suggest that the holding of office would be improper if the official would continuously be required to withdraw from the decision-making process.

Finally, dismissal with prejudice of their claims against the Authority by the Gee family would, in our view, be dispositive of the conflicts described in paragraphs 1 and 2 above.

Yours very truly,


KADISON, PFAELZER, WOODARD, QUINN & ROSSI

cc: Thomas E. Greer
Director, Airport Services

OFFICE OF CITY ATTORNEY

DATE: July 11, 1985

TO: The Honorable Mayor and
Members of the City Council

SUBJECT: Margie Gee/Burbank-Glendale-Pasadena Airport Authority
and Potential Conflicts of Interest

The Mayor has recently asked that I prepare an opinion as to whether Margie Gee, recently appointed by the City Council to the Burbank-Glendale-Pasadena Airport Authority, is disabled either from serving on the Authority or from taking part in Authority decisions.

I have reviewed the letter opinion of the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi, attorneys for the Authority, on this matter. I generally concur with their opinion and their analysis. A copy of their opinion is attached for your information.

Potential conflict situations arise primarily as a result of Mrs. Gee's and her family's participation as party plaintiffs in two cases against the Authority. In these cases Mrs. Gee and her family are seeking inverse condemnation and nuisance damages alleged to have resulted from the noise, fumes, and vibrations of aircraft operations at the airport. The following is a summary of the conclusions of the airport's attorneys in which I concur:

- o The mere existence of a conflict or potential conflict does not disqualify an official from holding office. Mrs. Gee may continue to serve as a member of the Authority although she will be required to recuse herself from participation on matters which may affect the outcome of her litigation or which could reasonably be expected to affect the property damage award which she and her family seek in the litigation.
- o Mrs. Gee's mere ownership of real property in the vicinity of the Airport does not automatically disable her from voting on noise related matters. Adverse financial impacts of airport operations have apparantly already been capitalized into the value of her property. Nevertheless, in situations where a proposal before the Authority could have a material financial effect on her property, and such

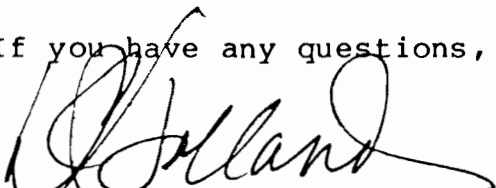
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effect is distinguishable from its effect on the public generally or a significant segment of the public, Mrs. Gee must recuse herself from the decision making process. Mrs. Gee is not, however, required to disqualify herself from a decision of the Authority which will affect Mrs. Gee's interests in substantially the same manner as it will affect the public or a significant segment of the public. Mrs. Gee is also not required to disqualify herself from participation in any decision of the Authority where the financial effect on her interests are not material.

- o Mrs. Gee's potential conflict situations would, obviously, be substantially minimized, if not outright eliminated, if she and her family would dismiss, with prejudice, their claims against the Authority.

I would like to take this opportunity to question the necessity of referring this issue to the Attorney General's Office for review. I would suggest that the opinion of the Authority's attorneys is entirely dispositive of this issue. If a second opinion is still necessary, for whatever reason, I would suggest that the issue be referred to the Fair Political Practices Commission in as much as the only applicable laws which have been called into question are the California Political Reform Act and the Authority's own Conflict of Interest Code which has been promulgated under the Political Reform Act. It has been my experience that the Fair Political Practices Commission is more expeditious than the Attorney General's Office in providing opinions or advice letters.

If you have any questions, please do not hesitate to call.



DOUGLAS C. HOLLAND
City Attorney

/jrm